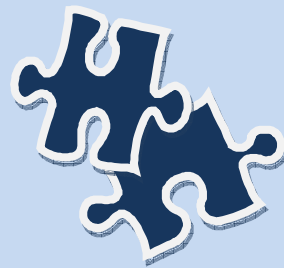


**Tort Case
Study Materials**



CASE STUDY SCENARIO

1. Employee, James Buchanan, is being accepted under Part E for asbestosis.
2. Employment at a DOE facility has been verified and causation has been established.
3. Claim number – 123456789
4. On his EE-1, in the Awards and Other Information are, Mr. Buchanan checked the 'YES' boxes to questions:
 11. Have you filed a lawsuit seeking either money or medical coverage for the above claimed condition(s)?
 13. Have you or another person received a settlement or other award in connection with a lawsuit or workers' compensation claim for the above claimed condition(s)?
5. The previous CE developed for this and received the documents confirming that several settlements resulted from exposure to asbestos (an illness covered under the Act).
6. No lump sum payment is being awarded.
7. No good cause has been shown for different allocation between the parties.

LETTER FROM ATTORNEY – SETTLEMENT PAYMENT HISTORY

Direct Dial (843) [REDACTED]

E-Mail: [REDACTED]

June 12, 2006

Mr. James Buchanan
[REDACTED]

Re: James Buchanan (Our ID No. [REDACTED])

Dear Mr. Buchanan

As you requested, I have listed below all the settlement history in your asbestos case with this office related to your asbestosis claim. I have also enclosed a copy of all expenses incurred as well as a copy of the Summons and Complaint.

9/24/2004: Garlock: \$1,000

James Buchanan: \$300.03

Jane Buchanan : \$200.02

Lincoln, LLC Fees: \$400

Lincoln, LLC Expenses: \$99.95

10/8/2004: Celotex: \$1,000

James Buchanan: \$300

Jane Buchanan : \$200

Lincoln, LLC Fees: \$400

Lincoln, LLC Expenses: \$100

4/28/2006: Metropolitan Life: \$1,900

James Buchanan: \$597.58

Jane Buchanan : \$398.38

Lincoln, LLC Fees: \$760

Lincoln, LLC Expenses: \$144.04

[REDACTED]
Attorneys at Law

Mr. James Buchanan
June 12, 2006
Page Two

Please let us know if you require further information.

Sincerely,



ITEMIZED LIST OF EXPENSES

Lincoln Johnson, LLC

6/12/2006 02:21 PM

Cumulative Costs

James Buchanan

Re: Buchanan, James ()

Cumulative Costs	
B-Reading	45.00
Filing Fees	100.00
Medical Records	49.91
Travel Expense	119.04
Copying (In House)	29.20
Fax (In House)	18.00
Overnight Mail	8.68
Shared Litigation Cost	52.76
Total Costs.....	\$422.55

Cumulative by ()

Page 1

6/12/2006 02:21 PM

THE COMPLAINT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

James Buchanan and
Jane Buchanan

Plaintiffs,

Y.

OWENS-ILLINOIS, INC.
WORTHINGTON CORPORATION
f/k/a Worthington Pump, Inc.
UNION CARBIDE CORPORATION
INGERSOLL-RAND COMPANY
C. E. THURSTON & SONS, INC.
CERTAINTIED CORPORATION
THE ANCHOR PACKING COMPANY
DANA CORPORATION
INDUSTRIAL HOLDINGS CORPORATION
f/k/a The Carborundum Company
THE FLINTKOTE COMPANY
AVENTIS CROPSCIENCE, USA, INC
f/k/a Rhone-Poulenc AG Company, Inc.)
f/k/a Amchem Products, Inc.
A. W. CHESTERTON COMPANY
JOHN CRANE, INC.
KELLOGG, BROWN & ROOT, INC.,
Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 03-CP-10- 3535

) Lab Tech/Engineer; Asbestosis

66

JULIE J. ABRISTROHE
CLERK OF COURT

2003 AUG 27 AM 11:22

THE

SUMMONS FOR RELIEF

Plaintiff Demands A Jury Trial

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office at 28 Bridgeside Blvd., Mt. Pleasant, South Carolina, 29464, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

August 24, 2003
Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

James Buchanan and
Jane Buchanan

Plaintiffs,

Y.

OWENS-ILLINOIS, INC.
A Delaware Corporation

WORTHINGTON CORPORATION
f/k/a Worthington Pump, Inc.
A Delaware Corporation

UNION CARBIDE CORPORATION
A New York Corporation

INGERSOLL-RAND COMPANY
A Delaware Corporation

C. E. THURSTON & SONS, INC.
A Virginia Corporation

CERTAINTEED CORPORATION
A Delaware Corporation

THE ANCHOR PACKING COMPANY
A Delaware Corporation

DANA CORPORATION
A Virginia Corporation

INDUSTRIAL HOLDINGS CORPORATION
f/k/a The Carborundum Company
A Delaware Corporation

THE FLINTKOTE COMPANY
A Delaware Corporation

AVENTIS CROPSCIENCE, USA, INC
 f/k/a Rhone-Poulenc AG Company, Inc.
 f/k/a Amchem Products, Inc.
 A Delaware Corporation

A. W. CHESTERTON COMPANY
A Massachusetts Corporation

IN THE COURT OF COMMON PLEAS

C/A No. 03-CP-10-3535

) Lab Tech/Engineer; Asbestosis

COMPLAINT

(Personal Injury)

Plaintiff Demands A Jury Trial

FILED
2003 AUG 27 AM 11:22
JULIE A. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

James Buchanan and
Jane Buchanan

Plaintiffs,

Y.

OWENS-ILLINOIS, INC.
A Delaware Corporation

WORTHINGTON CORPORATION
f/k/a Worthington Pump, Inc.
A Delaware Corporation

UNION CARBIDE CORPORATION
A New York Corporation

INGERSOLL-RAND COMPANY
A Delaware Corporation

C. E. THURSTON & SONS, INC.
A Virginia Corporation

CERTAINTEED CORPORATION
A Delaware Corporation

THE ANCHOR PACKING COMPANY
A Delaware Corporation

DANA CORPORATION
A Virginia Corporation

INDUSTRIAL HOLDINGS CORPORATION
f/k/a The Carborundum Company
A Delaware Corporation

THE FLINTKOTE COMPANY
A Delaware Corporation

AVENTIS CROPS SCIENCE, USA, INC
 f/k/a Rhone-Poulenc AG Company, Inc.
 f/k/a Amchem Products, Inc.
 A Delaware Corporation

A. W. CHESTERTON COMPANY
A Massachusetts Corporation

IN THE COURT OF COMMON PLEAS

C/A No. 03-CP-10-3535

) Lab Tech/Engineer; Asbestosis

COMPLAINT

(Personal Injury)

Plaintiff Demands A Jury Trial

FILED
2003 AUG 27 AM 11:22
JULIE A. ARMSTRONG
CLERK OF COURT
BY _____

JOHN CRANE, INC.
A Delaware Corporation

KELLOGG, BROWN & ROOT, INC.
A Delaware Corporation,

Defendants.

Now come the Plaintiffs James Buchanan and Jane Buchanan, citizens and residents of the State of South Carolina, and sue the defendants and allege as follows:

JURISDICTION

1. That as is evidenced by the caption of the instant Complaint which is specifically incorporated herein, some of the defendants are foreign corporations who are amenable to jurisdiction in the Courts of South Carolina by virtue of their respective contacts with the State of South Carolina and/or their respective conduct of substantial and/or systematic business in South Carolina which subjects them to the jurisdiction of the South Carolina Courts pursuant to the South Carolina Long-Arm Statute. Each defendant mines, manufactures, processes, imports, converts, compounds and/or retails substantial amounts of asbestos and asbestos-related materials which are sold, distributed and used in South Carolina. The plaintiff was exposed to various asbestos-containing products while working in various locations in South Carolina. That certain asbestos-containing products were manufactured at plant sites located within the State of South Carolina. That asbestosis is a progressive, insidious disease and, on information and belief, such exposure in South Carolina contributed in part to the plaintiff's contraction of his asbestosis and other industrial dust diseases caused by breathing defendants' asbestos-containing products.

FOR A FIRST CAUSE OF ACTION

2. Defendants, and each of them, are or at times relevant hereto, were miners, manufacturers, processors, importers, converters, compounders and/or retailers of asbestos and asbestos-related materials.

3. The defendants, acting through their agents, servants, and/or employees cause, and have caused in the past, certain asbestos and asbestos-related materials to be placed in the stream of interstate commerce with the result that said asbestos and asbestos-related materials came into use by the plaintiff.

4. Plaintiff is a lab tech/engineer who for a long period of time, worked with and was exposed to the asbestos and asbestos-related materials mined, manufactured, processed, imported,

converted, compounded and/or sold by the defendants, some of the exposure being within the State of South Carolina.

5. During the course and scope of his employment, plaintiff has been exposed to defendants' asbestos and asbestos-related materials, which exposure directly and proximately caused him to develop an illness known and designated as asbestosis and other industrial dust diseases caused by breathing defendants' asbestos-containing products.

6. The illness and disability of the plaintiff are the direct and proximate result of the negligence, recklessness and willfulness of the defendants, jointly and severally, in that they produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the defendants, and each of them, knew were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health.

7. The illness and disability of the plaintiff are the direct and proximate result of the negligence, recklessness, and willfulness of the defendants, jointly and severally, in that, even though the defendants knew, or, in the exercise of ordinary care, should have known, that the asbestos and asbestos-related materials were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and the defendants nonetheless:

- (a) Failed to advise plaintiff of the dangerous characteristics of their asbestos and asbestos-related products;
- (b) Failed or omitted to provide the plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliance, if, in truth, they were in any way able to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful asbestos-related materials;
- (c) Failed and omitted to place any warnings or sufficient warnings on their containers of said asbestos and asbestos materials to warn the handlers thereof of the dangers to their health in coming in contact with said asbestos and asbestos materials;
- (d) Failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and installing said asbestos and asbestos materials;
- (e) Inadequately warned, if, in fact, they warned at all, persons such as plaintiff of the dangers to

their health in coming in contact with and breathing said asbestos and asbestos-related materials, even after they knew of the dangers and cancer-causing effects, and up until the present time;

- (f) Did not recommend methods to improve the work environment;
- (g) Did not develop alternative products;
- (h) Continued to use a known cancer-causing product, to wit: asbestos;
- (i) That the defendant, Owens-Corning Fiberglas, failed to make inquiry of Owens-Illinois or read published literature establishing that Kaylo caused asbestosis in experimental animals and did not communicate that fact to users of such products.

At all times relevant, it was feasible for defendants to have warned plaintiffs, tested their asbestos products, designed safer asbestos products and/or substituted asbestos-free products.

As a result of the negligence, recklessness and willfulness, the plaintiff has been damaged severely as is set forth below.

FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats the allegations of the First Cause of Action where relevant.

9. That subsequent to the time the defendants caused the asbestos products to be sold and placed in buildings and on jobsites, the defendants knew, or in the exercise of ordinary care, should have known, that asbestos is deleterious, carcinogenic, and harmful to persons using buildings or on jobsites, but nevertheless, the defendants negligently and recklessly failed and refused to warn and advise the plaintiff of the dangerous characteristics thereof, and the dangers to the health and welfare of persons coming in contact with and breathing products even until the present, despite their knowledge of the presence of their products in the buildings or on jobsites. That to the present, possessed with information uniquely available to them relating to the dangerous effects of continued asbestos exposure, the defendants have refused to provide that information to the plaintiff, despite the defendants' knowledge that their asbestos has contaminated the plaintiff's buildings and jobsites.

10. Plaintiff has furthermore suffered continuing and lingering injury to himself due to the defendants' asbestos fibers previously inhaled. Said fibers, once inhaled, cause repeated and continuing injury to plaintiff.

11. That as a proximate result of the aforesaid acts of the defendants, and the continued presence of asbestos products in buildings and on jobsites, the plaintiff has been damaged as herein set forth.

FOR A THIRD CAUSE OF ACTION

12. Plaintiff repeats the allegations of the First and Second Causes of Action where relevant.

13. The defendants, and each of them, impliedly warranted that said asbestos materials were of good and merchantable quality and fit for their intended use.

14. The implied warranty made by the defendants, and each of them, that the asbestos and asbestos-related materials were of good and merchantable quality and for the particular intended use was breached and that certain harmful, poisonous and deleterious matter was given off into the atmosphere wherein the plaintiff carried out his duties as a lab tech/engineer working with asbestos and asbestos-related materials.

15. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, plaintiff developed an illness, to-wit: asbestosis and other industrial dust diseases caused by breathing defendants' asbestos-containing products.

FOR A FOURTH CAUSE OF ACTION

16. Plaintiff repeats the allegations of the First, Second, and Third Causes of Action where relevant.

17. Plaintiff further alleges that at the time the defendants, and each of them sold and/or delivered the aforesaid asbestos and asbestos-related products and at the time said products were used by plaintiff in the manner and environment intended, they were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to plaintiff's body.

The above was the proximate cause of the severe damages sustained by the plaintiff as hereinafter set forth.

FOR A FIFTH CAUSE OF ACTION

18. Plaintiff repeats and realleges the portions of the above paragraphs where relevant.

19. That at various times from 1929 to the filing of this law suit, defendants had actual knowledge of the dangers to plaintiff of asbestos exposure, nevertheless, defendants deliberately, intentionally and purposefully withheld such information from plaintiff, thus denying plaintiff of the knowledge with which to

take necessary safety precautions such as periodic x-rays and medical examinations and avoiding further dust exposure, the specifics of defendants' intentional acts being as follows:

- (a) Failing to warn prior users of the need for monitoring due to prior asbestos exposure;
- (b) Never issued recall-type letters or notices to prior users;
- (c) Frustrated the publication of articles on the asbestos health hazards in the literature;
- (d) Top management officials of defendants rejected advice of other corporate officials to warn of the hazards of their asbestos products; such rejection by top management officials being motivated by the possibility of adverse effects on profits;
- (e) Intentional inadequacy and delay of use of warnings on asbestos products;
- (f) Failed to advise plaintiff of medical findings known to defendants concerning the dangers of asbestos exposure;
- (g) Suppressed the dissemination of information to plaintiff concerning the hazards of asbestos exposure.

20. The foregoing deliberate, intentional and purposeful acts of the defendants were the direct and proximate cause of plaintiff's injuries and damages hereinafter described, and the plaintiff is therefore, entitled to compensation and punitive damages.

FOR A SIXTH CAUSE OF ACTION

21. Plaintiff repeats and realleges the portions of the above paragraphs where relevant.

22. That during, before and after plaintiff's exposure to asbestos products manufactured by defendants, the defendants falsely represented facts, including the dangers of asbestos exposure to plaintiff in the particulars alleged in the paragraphs above, while defendants each had actual knowledge of said dangers of asbestos exposure to persons such as plaintiff. And while defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

23. The foregoing representations were material conditions precedent to plaintiff's continued exposure to asbestos-containing products and defendants each intended that plaintiff act upon the

representations by continuing his exposure to the asbestos products. Plaintiff was ignorant of the falsity of defendants' representations and rightfully relied upon the representations.

24. As a direct and proximate result of the plaintiff's reliance upon defendants' false representations, plaintiff has suffered injury and damages hereinafter described.

FOR A SEVENTH CAUSE OF ACTION

25. Plaintiff repeats and realleges the portions of the above causes of action which are relevant.

26. The defendants had a post-sale duty to warn, which duty was breached and, as a result, plaintiff suffered injury and damages as hereinafter described.

DAMAGES

As a result of the development of asbestosis and other industrial dust diseases caused by breathing defendants' asbestos-containing products, plaintiff has suffered and sustained very serious injuries to his person requiring medical treatment.

Plaintiff has further suffered great pain, extreme nervousness and mental anguish as a direct result of the aforesaid injuries.

Plaintiff verily believes that his injuries and illnesses are permanent in nature and that he will be forced to suffer same for the remainder of his life, that his enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

Plaintiff alleges that as a result of the aforesaid illnesses, he has been forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that he will be forced to incur additional expenses in an effort to treat his illnesses as aforesaid, all to plaintiff's damage, compensatory and punitive in amounts to be determined by the trier of fact.

WHEREFORE, plaintiff prays judgment, joint and several, against the defendants for compensatory and punitive damages in amounts to be determined by the trier of fact and the costs of this action.

FOR AN EIGHTH CAUSE OF ACTION
(CONSORTIUM)

27. Plaintiff repeats the allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action where relevant.

28. As a direct and proximate result of the injuries and damages complained of herein with respect to Plaintiff Louis J.

Wickas, Jr., and as a direct and proximate result of the acts and omissions of the defendants, Plaintiff Patricia M. Wickas has also suffered and will continue to suffer loss of the consortium, society, companionship, fellowship and other valuable services of her husband.

DAMAGES

WHEREFORE, Plaintiff Jane Buchanan verily believes that she is entitled to actual damages against the defendants, jointly and severally, by reason of said loss of consortium and society proximately caused by the fault of the defendants, and punitive damages in an amount to be determined by the trier of fact, plus the costs of this action.

WHEREFORE, Plaintiffs James Buchanan and Jane Buchanan pray for judgment against all defendants for actual and punitive damages in amounts to be determined by the trier of fact and costs.

LLC

ATTORNEYS FOR THE PLAINTIFFS

August 24, 2003
Charleston, SC

[illegible]

BENEFITS OFFSET WORKSHEET

EEOICPA Part B/E Benefits Offset Worksheet

(For internal DEEOIC use only)

Employee:

Claimant:

Claim Number:

1. Gross Settlement/Final Judgment Amount.....

a. Amount of Line 1 that is for damages to real/personal property (if any)

b. Amount of Line 1 that is for medical treatment before filing date (if any)

c. Subtract Lines 1a and 1b from amount on Line 1 and enter balance here

2. Were the amounts entered at Step 1 only paid to or on behalf of one party (see Instructions, Step 2)?

Y / N:

a. If no, go to either Step 3 or Step 4

b. If yes, go to step 5

3. Allocation Between Parties Provided by Judge or Jury:

a. Amount of Line 1c awarded to employee for injuries due to covered exposure to toxic substance

b. Amount of Line 1c awarded to other party(s). Go to Step 5.

4. CE Allocation Between Parties (all other cases):

a. Standard allocation for living employee is 75% of Line 1c. Enter result here and go to Step 4c.....

b. Standard allocation for deceased employee is 50% of Line 1c. Enter result here and go to Step 4c.....

c. Good cause shown for different allocation?..(Y/N)

d. If yes, allocation for living/deceased employee is % of Line 1c. Enter dollar amount here.

April 2007

EEOICPA Bulletin 07-12
Attachment 1

5. Allowable Deductions from Payment:

a. Costs of Suit (see Instruction Step 5).....

Divide costs by gross payment to determine costs percentage (Line 5a/Line 1).

b. Multiply Line 1c, 3a, 4a, 4b or 4d (one only) by the costs percentage. Enter here.....

c. Attorney Fees.....

Divide attorney fees by gross payment to determine attorney fees percentage (Line 5c/Line 1).....

d. Multiply Line 1c, 3a, 4a, 4b or 4d (one only) by the LESSER of attorney fees percentage or 40%. Enter here.....

e. Enter amount of Line 1 that was paid to satisfy workers' compensation lien of a state authority or insurer (if any).....

6. Net Amount of Payment to be used for Offset:

a. Subtract Line 5b from Line 1c, 3a, 4a, 4b or 4d, as appropriate. Enter balance here.....

b. Subtract Line 5d from Line 6a. Enter result here.....

c. Subtract amount on Line 5e (if any) from Line 6b to arrive at amount of offset and enter result here..

7. Offset of Part B/E Benefits, Surplus Payment:

a. Amount of unpaid lump-sum payment.....

b. If Line 7a is larger than Line 6c, subtract Line 6c from Line 7a and enter balance due claimant here.....

c. If Line 7a is smaller than Line 6c, subtract Line 7a from Line 6c and enter amount of surplus to be recovered from future lump-sum payments and/or medical benefits here.....

April 2007

EEOICPA Bulletin 07-12
Attachment 1

What items should be included in the Memo to the File? List them below.

[illegible]